

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MOODY NATIONAL SHS HOUSTON H, LLC, et al.,	§	
	§	
	§	
Plaintiffs,	§	
v.	§	
	§	CIVIL ACTION NO. H-09-4105
RLJ III-FINANCE HOUSTON, LLC and CITICORP NORTH AMERICA, INC.,	§	
	§	
	§	
	§	
Defendants.	§	

MEMORANDUM AND ORDER

Plaintiffs Moody National SHS Houston H, LLC; Brett Moody; and twenty-eight unidentified tenants-in-common (“Plaintiffs”) initiated on December 23, 2009, in state court, an action asserting claims for relief for fraud, breach of contract, tortious interference with contract, and unjust enrichment. Defendant Citicorp North America, Inc. removed the action to federal court. On December 31, 2009, Plaintiffs filed a motion to obtain a temporary restraining order to enjoin a foreclosure sale of certain property (the “Subject Property”) scheduled for foreclosure on January 5, 2010. The parties have submitted extensive briefing and numerous exhibits. Additionally, oral argument was held at which counsel for all parties were afforded an opportunity to speak.

Plaintiffs seek to enjoin the foreclosure of the Subject Property because they allege Defendant RLJ III—Finance Houston, LLC’s (“RLJ”) actions are not in good faith. Plaintiffs have cited numerous precedents in which courts have delayed or prohibited lenders seeking to exercise their rights under applicable loan documents. None of those precedents provides sufficient authority, however, for the relief Plaintiffs request here. Plaintiffs were in default on monthly payments in the first quarter of 2009,

and have failed to make any payments since September 2009. Although Plaintiffs represent that they can make payment for substantially all of the amounts that have previously been unpaid, they have failed to tender such amounts to RLJ or to the registry of the Court.

The Court would much prefer that the parties resolve their differences without legal action. The Court is, however, without a cognizable basis to enjoin the pending foreclosure sale.

Plaintiff's Motion for Temporary Restraining Order (Doc. No. 10) is **DENIED**.

IT IS SO ORDERED.

SIGNED this 4th day of January, 2010.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE